

Teaching with Primary Sources Guide



COPYRIGHT AND FAIR USE: QUESTIONS AND ANSWERS

How do I use the Restriction Statements that accompany the American Memory collections?

The Library of Congress assesses materials for legal considerations prior to placing items online (see [legal assessment](#)). The Restriction Statement that accompanies each American Memory collection provides known information regarding ownership of materials in the collection. If known, we include contacts for permission. In some cases the Restriction Statement will indicate that material in a particular collection may be used freely; in other cases the Restriction Statement may only be a starting point for your inquiry.

What is copyright?

Copyright refers to the author's (creators of all sorts such as writers, photographers, artists, film producers, composers, and programmers) exclusive right to reproduce, prepare derivative works, distribute copies, and publicly perform and display their works. These rights may be transferred or assigned in whole or in part in writing by the author. Unless otherwise agreed in writing, work created by an employee is usually owned by the employer. The U.S. Copyright Act gets its authority from Article 1, [Section 8](#), cl. 8 of the U.S. Constitution.

If there is no copyright notice, does that mean there is no copyright?

The absence of a copyright notice does not mean that there is no copyright. Copyright protection exists automatically from the moment of creation in a tangible fixed form, which is generally considered to include electronic form. A notice is not required to protect copyright.

When can I assume that there is no copyright protection for a work?

Work created by employees of the federal government as a part of their job is in the public domain, i.e., not protected by copyright. This is why you may use *American Life Histories: Manuscripts from the Federal Writers' Project, 1936-1940*, materials in American Memory without being concerned with infringing on someone's copyright (other legal concerns may be raised in the Restriction Statements). Remember to credit your sources, even for government materials.

Does copyright give the owner an absolute monopoly?

Although copyright is an exclusive right - a sort of restricted monopoly - it is limited in various respects. Authors control only rights specified under the copyright law and may not control other uses. Copyright is also limited by duration and, under American law, by fair use. As to *duration*, copyrights do eventually expire. Where possible, the Restriction Statement accompanying each collection notes that copyright protection has expired.

In general, copyrights last for the life of the author, plus 70 years. In some works, however, the rules for calculating duration are complex. You should explore some of

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the U.S. Copyright Office's [suggested Internet sites](#) to learn more about calculating duration of copyright in general. As to Fair Use, see the following section.

Where can I go for more information on copyright?

Start with the [U.S. Copyright Office](#) in the Library of Congress. They maintain a list of [Copyright Information Circulars and Form Letters](#). Scroll to find "Circular 21-Reproductions of Copyrighted Works by Educators and Librarians." In addition, the U.S. Copyright Office maintains a list of [Internet Resources](#).

What is "fair use"?

Fair use is an exception to the exclusive protection of copyright under American law. It permits certain limited uses without permission from the author or owner. Depending on the circumstances, copying may be considered "fair" for the purpose of criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research.

To determine whether a specific use under one of these categories is "fair," courts are required to consider the following factors:

- The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- The nature of the copyrighted work;
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole (is it long or short in length, that is, are you copying the entire work, as you might with an image, or just part as you might with a long novel); and
- The effect of the use upon the potential market for or value of the copyrighted work.

Keep in mind that even in an educational setting, it is not fair use to copy for a "commercial motive" or to copy "systematically," that is, "where the aim is to substitute for subscription or purchase." No factor by itself will determine whether a particular use is "fair." All four factors must be weighed together in light of the circumstances. See the U.S. Copyright Office's [Copyright Information Circulars and Form Letters](#) for "Circular 21-Reproductions of Copyrighted Works by Educators and Librarians."

For classroom use, how does "fair use" apply?

The Internet magnifies the possibility for making an infinite number of perfect copies, which changes what it means to be "fair." Be careful when using material from the Internet; keep in mind the four factors of the fair use test, or get permission from the owner. The National Digital Library Program goes to great effort to identify possible copyright owners for items in American Memory, though we are often unable to ascertain possible rights holders because of the age of the materials. When known to us, we will provide that information in the Restriction Statements accompanying the collections.

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Can you describe a few examples based on questions from teachers who use the Learning Page?

Sure...here are a few. The general concepts discussed here apply to student and teacher uses.

Is there a difference in fair use guidelines for public, non-profit, or private schools?

What's fair use in a public school is probably fair use in a non-profit private school. However, the more commercial a particular use is, the less likely it is to be fair, even if it is educational. Thus, if a commercial motive is present, say, for a private, commercial test-preparation service, then copying is less likely to be fair despite the underlying educational purpose.

A teacher selects a set of 15 photos or other materials from the *American Life Histories: Manuscripts from the Federal Writers' Project, 1936-1940*, and makes 5 printed copies of this set for small groups to use in a lesson. Is there a limit on the number of items in a set, or the number of copies that can be made for the lesson?
American Life Histories: Manuscripts from the Federal Writers' Project, 1936-1940, was a government-sponsored project. It is generally considered to be in the public domain as work by government employees. This is also the case for material from the *Color Photographs from the Farm Security Administration and the Office of War Information, 1938-1944*. This means that there is no copyright protection or restriction, thus you may copy and freely distribute any number of these items. Because there may be publicity or privacy rights in such material, however, you need to make an independent assessment of possible legal rights with the assistance of the Restriction Statement in the collection. In this case there is no limit on the number of permissible items in a "set" or the number of permissible copies. Remember, this answer is specific to the *American Life Histories: Manuscripts from the Federal Writers' Project, 1936-1940*, and *Color Photographs from the Farm Security Administration and the Office of War Information, 1938-1944*. If you think the materials might be protected by copyright, see the Restriction Statement in each American Memory collection.

This lesson will be used in other sections of the same class in the same semester.

This is still a one-time use with different students. Is this fair?

As long as the material to be copied is in the public domain, you can copy for one class or many and for one or more semesters. If you wish to use material that is NOT in the public domain, and for which copyright protection exists, then your copying is more likely to be considered fair if it is spontaneous ("Gee, I saw this last night at home on my computer and it would be great for tomorrow's class!"). The more sections and the more semesters you plan to copy particular materials for, the less likely your use is to be considered fair. If you want to use copyrighted material repeatedly, you should obtain permission from the copyright owner.

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The lesson will be used by different teachers teaching the same class. Fair?

Again, the more copying that occurs, the less likely the use is to be fair. The less spontaneous the copying is, the less fair. If you are making digital copies or copies that will be available online, it will be less likely to be fair than if you made paper copies, given the potential impact on the copyright owner's market.

This lesson will be used year after year by the same teacher at the same point in the plan of studies for the course.

Lesson planning indicates a systematic planning that is not terribly spontaneous and thus less likely to be fair. If you plan to use the same items year in, year out, think seriously about seeking permission. Document your efforts. You need to make an independent assessment - the Library of Congress makes the American Memory digitized historical collections available for the limited purposes noted in the Restriction Statements. We cannot and do not "warrant" that subsequent uses are fair. Incidentally, copyright owners may be willing to give permission for your use without charge. Once you find an owner, let them know what your specific intention is (who will use it, for what, where, when, how, why - the basics). Always credit sources.

This lesson will be copied for each student in the section of the class.

If the material is in the public domain, copy the materials for each student in the class with no worries. If the work is copyrighted, it is probably fair if you make paper copies for each student in a section of a single class for a single semester. For more on electronic copies, see the next few situations.

A teacher prepares a lesson for a World Wide Web presentation using photographs and documents from the Library of Congress (not linking to them in American Memory).

Because the teacher is placing material on a site where anyone can copy or download the material, the use is less likely to be fair than if the teacher prepares the same lesson for a *local area network*, or on a *stand-alone machine*. If material is protected by copyright, it would be wise to get permission for the World Wide Web presentation. Always keep in mind all four of the fair use factors in the [Fair Use section](#) of this page.

Students in a project-based curriculum prepare presentations with multiple examples of their topic. How many is too many? How much of a text is too much?

As you know from the above examples, the medium in which the student presents the examples contributes to the fairness of the use. If the examples are placed on a local network for a short period or printed only for class members, it may be fair,

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depending on a balancing of all [Fair Use factors](#). It is probably not fair to display the same material on a World Wide Web site.

The question of how much is too much is also hard to define. A page or two of a two hundred page novel may be acceptable, though if you copy a particularly significant portion, such as the two pages that make the book marketable (the end of a mystery, for example), you may diminish the market value - which would weigh heavily against one of the fair use factors). A mere two lines from a short poem might also be unfair for the same reason.

A student prepares a multimedia presentation using American Memory resources. How does a student credit sources? Is permission to reproduce materials needed?

Everyone who uses materials from American Memory should credit the American Memory collections of the Library of Congress. See [Citing Electronic Sources](#) for suggestions. Further, users should credit particular items and collections which are described in Restriction Statements within the collections. The Library of Congress does not grant or withhold permission to use the materials that are made available online. You must contact the owner for any uses that exceed the limits of fair use. Proper credit is always an indication of good research.

May I link to American Memory? Do I need permission?

If you wish to link to our site, you may do so even without permission as long as your link makes it clear that there is a transition to another site, and that you do not present the link in a way that implies that the Library of Congress or the National Digital Library Program is endorsing a particular product, service, or organization. However, the Library of Congress does like to hear how its site is being used, so please send an email message to the [National Digital Library Program mailbox](#) as a courtesy.